THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.26878 OF 2005

DATED: 18TH OCTOBER, 2006.

Between :

M/s. R.R. Industries Rice Mill,
Pragathi Industrial Estate, Gorrekunta,
Warangal, rep. by its Partner J. Yellaiah. .. Petitioner

And

1. The Indian Bank, Circle Office,
   Hyderabad, rep. by its Chief Manager
   And another. .. Respondents

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ORDER :

This writ petition is filed seeking a Mandamus declaring the action of the respondents in rejecting the claim of the petitioner firm under One Time Settlement (OTS) Scheme in terms of the guidelines issued by the Reserve Bank of India, dated 3-9-2005 as arbitrary and illegal, and consequently to set aside the auction of the properties vide tender notice dated 30-11-2005.

The facts, in brief, are as under :

The petitioner firm which claims to be a Small Scale Industry having availed loan from the 2nd respondent Bank, failed to discharge the same and consequently the 2nd respondent Bank issued a notice recalling the entire loan amount. In response, the petitioner by letter dated 15-3-2003, while explaining the reasons for its inability to discharge the loan, requested the Bank to consider its claim under OTS. However, the Bank, without considering the said request, initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'). Aggrieved by the same, the petitioner filed W.P.No.2030 of 2004 questioning the constitutional validity of the provisions of the Act. Though initially interim stay was granted, ultimately following the judgment of the Supreme Court, the said writ petition was dismissed by order dated 21-4-2004. Thereafter, the petitioner made a fresh representation dated 23-8-2004 requesting

to consider its claim for OTS. In response, the petitioner was informed by the 2nd respondent Bank that its account would not come under the purview of the OTS under the Provisions of the Reserve Bank of India (RBI) Circular. That apart, the 2nd respondent Bank has also issued a notice under Section 13 (4) of the Act and brought the mortgaged properties to sale. Questioning the same, the petitioner filed W.P.No.25709 of 2005, in which an interim direction was granted on 2-12-2005 permitting the petitioner to make a representation within a period of one week for settlement of his dues under OTS and the same shall be considered by the 1st respondent therein within 10 days thereafter. Accordingly, the petitioner made a representation on 4-12-2005 requesting to consider the case of the petitioner under OTS Scheme. The said representation was rejected by the 2nd respondent by letter dated 12-12-2005 on the ground that the account of the petitioner firm has been classified under willful default category and therefore it is not eligible for consideration under OTS Scheme under RBI guidelines.

Aggrieved by the said action of the respondents, this writ petition is filed contending *inter alia* that the action of the respondents in not considering the claim of the petitioner firm to settle the loan account under OTS Scheme is not in conformity with the guidelines issued by the RBI. It is further contended that as per the Circulars issued by the RBI from time to time the Small and Medium Enterprises are extended the benefit of OTS. Even the cases pending before the Courts and Debts Recovery Tribunals, subject to consent decree being obtained from the Courts and Tribunals, are entitled for settlement under OTS scheme. It is also contended that keeping in view the fact that the petitioner had earlier cleared key loan, medium term loan taken from the Bank and the only default is in respect of open cash credit loan, there is absolutely no justifiable reason for rejecting the proposal for settlement under OTS scheme.

On behalf of the respondent Bank, a counter-affidavit has been filed sating that the petitioner had defaulted in payment of the loan amount and the present outstanding amounts is Rs.43,83,582/- apart from the interest at agreed rate w.e.f. 1-4-2005. It is also stated that the petitioner is not eligible under the OTS scheme since its account was classified as account of willful defaulter and the classification was done as per the rules and procedures governing the Banking operations.

I have heard the learned Counsel for the petitioner as well as the learned Counsel appearing for the respondents; and perused the material on record.

The specific case of the respondents in the instant case is that the petitioner was declared as willful defaulter long ago and on 26-5-2001 the Bank had written a letter to the petitioner requesting to make arrangements for adjustment of the outstanding liability as no stocks were available to cover the advance. It is also not in dispute that the Bank had issued a notice dated 16-10-2001 to the petitioner firm as well as to its partners and mortgagers informing that the petitioner firm was identified as willful defaulter for reporting to the Reserve Bank of India and calling upon them to respond within 10 days failing which their names would be included in the list of willful defaulters for reporting to Reserve Bank of India. It is also clear from the counter-affidavit filed on behalf of the respondents that the Head-Office of the respondent Bank had addressed letter to the 2nd respondent on 28-12-2001 stating that the High Level Committee had resolved and approved the account of the petitioner as willful defaulter account and reported to the Reserve Bank of India. Thereafter, a final notice dated 11-6-2002 was issued to the petitioner, but the petitioner failed to respond. In the meanwhile, Securitisation Act had been enacted and while invoking the provisions of the said Act fresh notices were issued to the petitioner under Sections 13 (2) and 13 (4) of the Act. As noted above, the earlier writ petitions filed by the petitioner questioning the

said proceedings were dismissed.

Thus, it is clear that the petitioner firm is a willful defaulter and consequently its case falls under the exceptions under the RBI guidelines dated 3-9-2005.

However, the learned Counsel for the petitioner contended that under Section 35-A of the Banking Regulation Act, 1949, the respondent Bank is bound by the directions of the Reserve Bank of India. There can be no dispute that Sub-Section (3) of Section 21 of the Banking Regulation Act, every banking company shall be bound to comply with any directions given to it under Section 21 of the Banking Regulation Act. That apart, Section 35-A of the Banking Regulation Act empowers the Reserve Bank of India to give directions in the public interest or in the interest of banking policy or to prevent the affairs of any Banking Company being conducted in a manner detrimental to the interests of the depositors or to secure the proper management of any Banking Company.

It is also true that the Reserve Bank of India is entitled to lay the banking policy which is applicable to all the Banking companies. However they are regulatory measures for the purpose of carrying on commercial activity in banking. If they fail to follow, the Banking Regulation Act itself has provided certain consequences.

The guidelines issued by Reserve Bank of India indicating the method of implementation of the OTS scheme for recovery of non-performing assets are merely directory and cannot be held to be mandatory in nature. As a matter of fact, the said guidelines exempted certain category of cases such as cases of willful default, fraud and malfeasance. Similarly, the NPAs crossing Rs.10 crores are also exempted. The guidelines also did not indicate the maximum or minimum amount at which the OTS has to be agreed upon. Thus, it is clear that it is always open to the concerned Bank either to accept or not depending upon the facts and circumstances of the case.

Moreover, the matters relating to recovery of loans are

contractual in nature. Particularly the One Time Settlement of accounts is nothing but a compromise between two parties to contract. Such settlement can be arrived at only with the consent of both the parties, particularly the consent of the creditor who has to relinquish a part of his claim and agree to take a lesser amount. In the absence of consent of one of the parties, there cannot be settlement of accounts.

As expressed above, the guidelines are not mandatory in nature and they do not confer any legal right on the petitioner which can be enforced against the respondent Bank. On that ground also, the petitioner cannot seek a Writ of Mandamus.

In the circumstances, it cannot be held that the respondent had acted in violation of the provisions of either the guidelines or the provisions of the Banking Regulation Act, 1949. Hence, no Mandamus can be issued compelling the respondents to accept the request of the petitioner for consideration under OTS scheme.

The Writ Petition is misconceived and the same is accordingly dismissed. No costs.

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G. ROHINI, J.

Dt. 18-10-2006

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